

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 311 OF 2005

Coca Cola India Private Limited	.. Petitioner
V/s.	
The Deputy Commissioner of Income Tax & Ors.	.. Respondents

Mr. S.E. Dastur, Senior Advocate with Mr. R. Murlidhar
i/b. M/s. Udwadia & Udeshi for the Petitioner
Mr. R.V. Desai, Senior Advocate with Mr. R. Ashokan for
the Respondents

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 16.02.2005

P.C.:-

1. Rule. Rule made returnable forthwith. The learned counsel for the Respondents waives service. By consent taken up for hearing. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents.

2. The Petitioner in this Petition, is basically challenging the demand of tax arising out of the assessment order passed for the Assessment Year 2001-2002 by initiating recovery proceedings under Section 226(3) of the Income Tax Act. It appears that originally the demand raised was around Rs. 80.08 Crores, which was later on pursuant to order of rectification reduced to Rs. 74.73 Crores. The appeal filed against the order of assessment has been fully heard by the C.I.T.(Appeal) and the judgment is awaited.

3. In the meantime the DCIT rejected the stay

application on 25.6.2004 and attached all the five Bank accounts of the Petitioner on 30.6.2004. The Petitioner approached the Commissioner of Income Tax-I, Pune for lifting the said attachment. At that time, the Petitioner agreed to deposit a sum of Rs. 10 Crores by three instalments from 20.7.2004 to 20.9.2004 so that the attachment of bank account could be lifted immediately. By his order dated 2.7.2004 the C.I.T. accepted the proposal and directed the Petitioner to pay Rs. 10 Crores in three instalments, subject to review of outstanding taxes on 5.10.2004. There is no dispute today that the said amount of Rs. 10 Crores has already been paid by the Petitioners. In October 2004, the Petitioners in the light of the order passed by the I.T.A.T. on 5.3.2004 for Assessment Year 1999-2000 and the order passed on 2.7.2004 for Assessment year 2000-2001 wherein similar issue is involved, requested for stay of the demand. The Commissioner, Income Tax-I, Pune passed an order on 20.12.2004 directing the Petitioner to pay a sum of Rs. 36 Crores by way of seven instalments as indicated in paragraph 12 of the said order. In view of the above, the Petitioner approached the Chief Commissioner of Income Tax, Pune and on 11.1.2005 hearing was fixed before CCIT. It appears that the concerned Chief Commissioner of Income Tax was not available on the said day. However, without fixing any other day for hearing, the application for stay was rejected. Subsequently all the five Bank accounts were attached under section 226(3) of the Income Tax Act on 18.1.2005. Hence this Petition.

4. Shri Dastur, the learned senior counsel appearing on behalf of the Petitioner pointed out that the huge demand for the assessment year 2001-2002 has arisen on account of the dis-allowance of advertisement expenditure as well as service charges. Similar disallowance made for assessment years, 1999-2000 and 2000-2001 were upheld by C.I.T. (Appeal) and further appeals filed by the assessee are pending before the Income Tax Appellate Tribunal, Pune bench. For both the assessment years 1999-2000 and 2000-2001 the Tribunal has found that the assessee has a prima facie arguable case and the balance of convenience was in favour of the assessee and accordingly granted stay of demand on deposit of Rs. 2 Crores and 9 Crores respectively. Mr. Dastur submitted that the above Appeals were originally kept for hearing on 5.10.2004 and the same were adjourned to 3.1.2005 at the instance of the Revenue and again at the instance of Revenue, the same has been again adjourned to 28.3.2005. Mr. Dastur emphasised that on both the above occasions the adjournment was neither sought by the Petitioner nor it's Counsel.

5. Mr. Dastur submitted that the appeal filed against the assessment year 2001-2002 is concerned, the Commissioner of Income Tax (Appeal) has already heard the matter on 9.2.2005. Hearing was concluded on that day and the judgment is likely to be delivered soon. Under

these circumstances, Shri Dastur, the learned Senior counsel appearing on behalf of the Petitioner seeks stay of the recovery with regard to the aforesaid dues till the decision is given by the Income Tax Appellate Tribunal in the pending appeals. Shri Dastur also brought to our notice that the enforceable demand as of now for the assessment year 2001-2002 is Rs. 37.41 Crores and not Rs. 64.77 Crores as claimed by the Revenue. (Rs. 22.74 Crores towards tax + Rs. 8.31 Crores towards interest) As against the subsisting demand of Rs. 37.41 Crores, the C.I.T. has ordered deposit of Rs. 36 Crores, which is totally disproportionate, harsh and unreasonable. Under these circumstances, Shri Dastur, the learned Senior counsel prayed that the impugned orders passed should be quashed and the recovery proceedings be stayed, and the freezing of bank accounts of the Petitioner should be lifted.

6. Shri Desai, the learned Senior counsel appearing for the Respondents submitted that the conditions imposed are very fair and the assessee who has made substantial profits cannot make grievance in paying the tax as per the assessment order and this Court ought not to interfere under Article 226 of the Constitution of India and in any event, he submits that if at all the stay were to be granted, the Petitioner must be put to terms.

7. After hearing both the parties, and especially in

view of the facts and circumstances that on the very same issue, for the assessment year 1999-2000 and the assessment year 2000-2001, the Income Tax Appellate Tribunal had found a prima facie arguable case and balance of convenience in favour of the assessee and granted stay of recovery on deposit of certain amounts, we are of the opinion that the order for deposit of Rs. 36 Crores as against the subsisting demand of Rs. 37.41 Crores is too harsh. The main issue would have been settled by now by the I.T.A.T. if the Revenue had not sought adjournment time and again. Moreover, the appeal filed by the assessee for the assessment year 2001-2002 has already been heard and the order is awaited.

8. Having regard to the aforesaid facts and circumstances, we make Rule absolute in terms of prayer clause (a) and stay the demand subject to the following conditions:-

(A) The Petitioner shall deposit a sum of Rs. 5 Crores on or before 28.2.2005 in the concerned Bank on a/c towards payment of Income tax.

(B) The Petitioner shall deposit a further sum of 5 Crores on or before 25.3.2005 as aforesaid.

(C) The Respondents shall lift the attachment of the bank accounts of the Petitioner, forthwith.

9. It is made clear that the stay of demand will be till the disposal of the appeal by C.I.T. (Appeal) and if the order of C.I.T. (Appeal) is against the assessee, then the stay of demand shall continue till the stay application is disposed of by the ITAT, provided the Petitioners file appeal and stay application before the I.T.A.T. within the prescribed period. The Respondents are granted liberty to approach this Court in the event, the Petitioner does not deposit the sum of Rs. 5 Crores on or before 28.2.2005 or even the subsequent instalment of Rs. 5 Crores on or before 25.3.2005. The Petition stands disposed of in the above terms.

10. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar/Court Stenographer.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)